



Mark Connolly  
Director

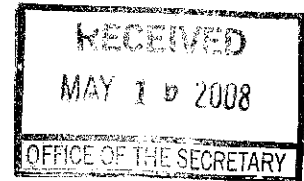
# State of New Hampshire

## Department of State Bureau of Securities Regulation

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May 15, 2008

Nancy Morris, Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-0609



Re: SR-NASDAQ-2008-013; Proposed NASDAQ Rule Change Relating to  
Adoption of Additional Initial Listing Standards for Special Purpose Acquisition  
Vehicles; Release No. 34-57685

Dear Ms. Morris:

The Corporate Finance Section Committee of the North American Securities Administrators Association<sup>1</sup> (the "Committee" and "NASAA," respectively) appreciates this opportunity to comment on the NASDAQ's proposed rule change relating to the adoption of additional initial listing standards for special purpose acquisition vehicles (often referred to as "SPACs"). The Committee opposes the rule change, and also wishes to put on record its serious and longstanding concerns about "blank check" company offerings.

### Blank Check Companies and Fraud

Blank check offerings have existed for a long time, and there has been a notable amount of fraud connected with these companies. For instance, in August 1997, the NASD (now "FINRA") ordered 29 brokers at GKN Securities to pay over \$2.1 million in fines and restitution for excessive mark-ups and trading violations, many of these related to blank-check companies, for which GKN was a prominent underwriter.<sup>2</sup>

<sup>1</sup> The oldest international organization devoted to investor protection, NASAA was organized in 1919. Its membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, Mexico, Puerto Rico, and the U.S. Virgin Islands. NASAA is the voice of securities agencies responsible for grassroots investor protection and efficient capital formation.

<sup>2</sup> See, NASD Regulation Fines GKN Securities and 29 Brokers \$725,000; Firm Must Also Pay \$1.4 Million in Restitution to Investors:

<http://www.finra.org/PressRoom/NewsReleases/1997NewsReleases/P010512>

## Problems Inherent in Blank Check Companies

The structure of blank check offerings raises fundamental issues regarding investor protection and adequacy of disclosure, including:

- Layering of expenses (including the costs of setting up the SPAC, the costs of shopping for an acquisition, and the costs of acquiring the target company);
- That SPACs turn upside down the established disclosure and review system for securities offerings (investors first make a purchase decision, and they only later learn the fundamental information about the company);
- That SPACs lend themselves to highly promotional marketing, both at the IPO stage and in aftermarket trading; and
- Past fraud in these offerings.

The Committee notes that the Commission has acted to improve disclosure relating to blank check companies by adopting special disclosure requirements for these issuers under SEC Rule 419. This rule begins to address many of the fundamental concerns about these offerings, particularly by requiring that investors may elect not to remain an investor after a target company has been selected by the blank check company's management. Nonetheless, these offerings remain fundamentally problematic because they require investors to make an initial investment decision and commit capital before they know in what business the blank check company will be investing.

## Statements of Regulators Opposing Blank Check Companies

In 1989, in response to fraud and abusive practices relating to blank check companies, NASAA went on record opposing this category of offerings.<sup>3</sup>

We also note that the NASDAQ recently stated in its February 28, 2006 petition letter to the SEC, asking that securities listed on the NASDAQ Capital Market be covered securities under Section 18 of the '33 Act that it would not list blank check companies. In that letter, NASDAQ concisely described the fundamental problems with these offerings:

*Nasdaq has, when appropriate, used its broad discretionary authority to deny listing on the NCM to a security that otherwise meets the listing requirements, and the Commission recently upheld the exercise of this discretion. Based on this discretion, Nasdaq has denied listing to types of companies that certain named markets have welcomed. For example, Nasdaq has refused to list special purpose acquisition companies (so-called "SPACs") because investors in such an offering do not know what it is they are purchasing and because it is not possible to determine whether the company to be acquired will satisfy the quantitative and*

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<sup>3</sup> See, NASAA Membership Resolution Declaring Blank Check Blind Pool Offerings to Be Fraudulent Practices, April 29, 1989, (NASAA Reports (CCH), Para. 7025, page 7028).